

Policy:

CG 003 Accessing Legal Advice

(Review Date extended to 30/06/2021 by PGG)

Executive or Associate Director lead	Director of Corporate Governance
Policy author/ lead	Head of Corporate Affairs
Feedback on implementation to	Head of Corporate Affairs

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Policy Version and advice on document history, availability and storage

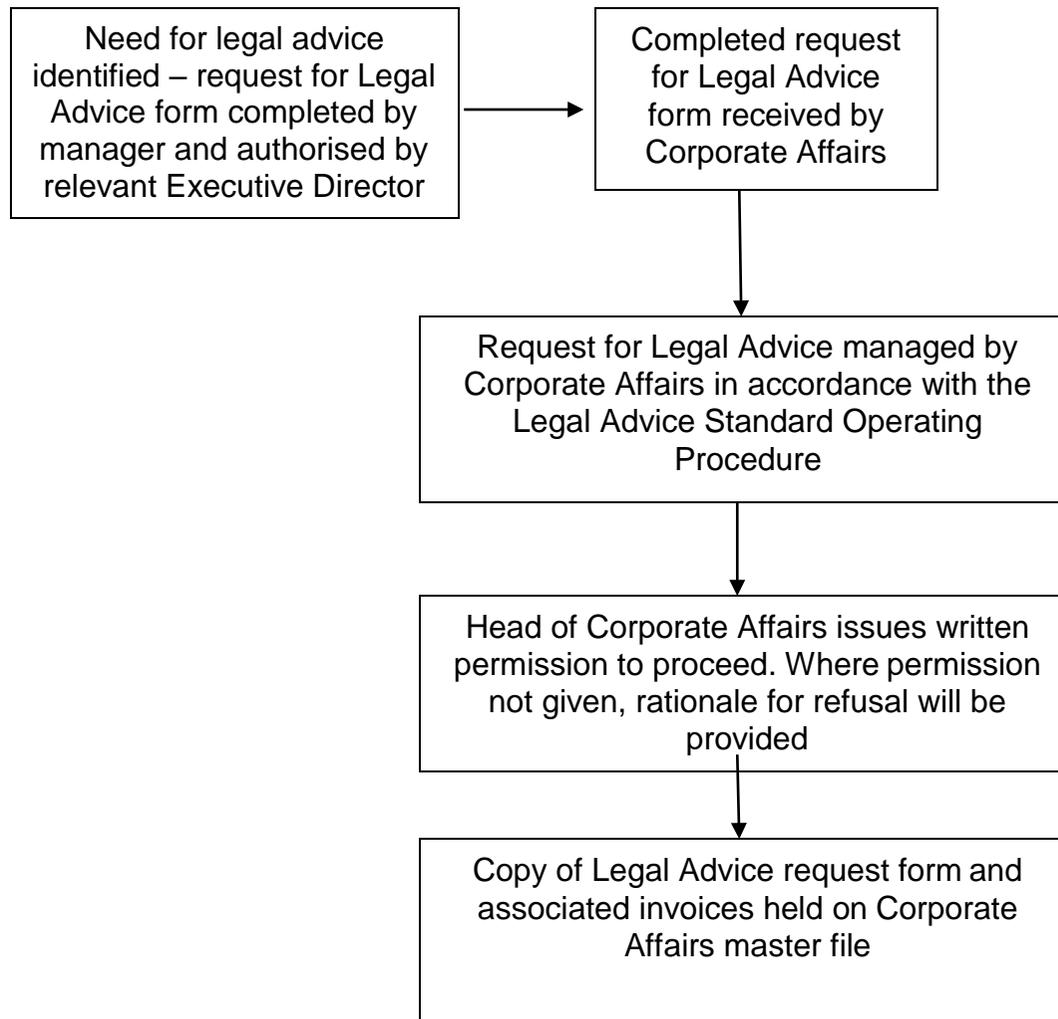
This is version 6.1 of this policy. This version replaces version 6.

This policy will be available to all staff via the Sheffield Health & Social Care NHS Foundation Trust Intranet and on the Trust's website. The previous version will be removed from the Intranet and Trust website and archived. Any copies of the previous policy held separately should be destroyed and replaced with this version.

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Flowchart



1. Introduction

From time to time it is necessary for staff to access advice from the Trust solicitors.

This Policy has been implemented since 06 August 2007 to ensure financial probity, to create an audit trail, and to comply with external scrutiny.

All requests for legal advice must be authorised by an Executive Director on a case by case or issue by issue basis.

2. Scope

This policy applies Trustwide and to all those working in the Trust in whatever capacity, including volunteers (including service user volunteers), Governors, students, casual and agency workers and secondees, all of whom are collectively referred to as staff in this policy.

All staff are expected to comply with this policy at all times.

3. Definitions

Legal advice - refers to any information required from the Trust solicitors, whether it be in written or verbal form.

4. Purpose

The primary objective is to ensure that all requests for legal advice are appropriate and necessary.

The secondary objective is to have in place a system that monitors the financial cost of legal advice and the nature of the advice sought.

5. Duties

The Director of Corporate Governance (Board Secretary) is the Trust Board Member with overall responsibility for litigation and will keep the Executive Directors' Group, Quality Assurance Committee and Trust Board informed of major developments.

The Head of Corporate Affairs has responsibility for litigation and is the sole signatory for the litigation budget. She will maintain appropriate review procedures for both clinical and non-clinical requests for legal advice and will report on litigation issues via the Quality Assurance Committee. The Head of Corporate Affairs is responsible for the day to day operational management and co-ordination of all litigation matters.

6. Process

6.1 Appointment of Legal Advisers

The Trust appoints legal advisers from firms appointed to the Panel approved by the North of England Commercial Procurement Collaborative to provide a range of legal services, including advice on medico legal, Employers' Liability and associated matters. At the present time the list includes DAC Beachcroft LLP, Browne Jacobson LLP, Capsticks LLP and Browne Jacobson LLP. A full list can be obtained from the Head of Corporate Affairs.

6.2 Legal Advice Requests

Staff should liaise with the Head of Corporate Affairs **before** submitting the legal advice request form. It may be that external advice need not be sought as relevant advice is available in-house. The Head of Corporate Affairs will also advise on which firm is to be appointed, the level of seniority of the lawyer required to advise, and the possibility of the negotiation of a fixed fee for any given piece of work. Where costs are expected to exceed £10,000 for any given piece of work, three tenders should be sought from firms on the Panel. Again, this is something that should be discussed with the Head of Corporate Affairs **before** the legal advice request form is submitted.

All staff requiring legal advice must complete the appropriate request form (see Appendix A). This form is available on the Corporate Affairs section of the intranet. Hard copies are available from the Head of Corporate Affairs on request.

The form must be signed by the relevant Executive Director of the Service in which the member of staff seeking advice is based and forwarded to the Head of Corporate Affairs. This must take place **before** legal advice is sought.

6.3 Request Handling Procedures

On receipt of the authorisation form signed by the relevant Executive Director, the request will be countersigned by the Head of Corporate Affairs. An assigned reference number will be allocated and the request logged on the appropriate database.

Staff are required to demonstrate that they have considered the seniority of the lawyer required to advise on any given piece of work, in addition to which, where costs for a piece of work are expected to exceed £10,000, three tenders should be sought from any of the firms on the Panel. The Head of Corporate Affairs is happy to advise in terms of the firms/individuals best placed to advise the Trust on any specific issue.

Initial contact with the solicitor appointed will be made by either the Head of Corporate Affairs or the member of staff requesting the advice required, once authorisation has been received. **Staff should not instruct solicitors in respect of pieces of work until written authorisation (via e-mail or fax) to proceed has been received from the Head of Corporate Affairs.**

On receipt of solicitors' monthly invoices, each item for which payment is requested will be cross-referenced to ensure that the requirements regarding authorisation were complied with prior to advice being sought.

Any requests for payment of items not authorised will be brought to the attention of the relevant Executive Director. Invoices will **not** be paid until all items for which payment has been requested have the relevant supporting authorisation duly signed.

6.3 Learning

The Head of Corporate Affairs will compile a six monthly Litigation Bulletin for clinicians and senior managers which will include details of the most commonly requested pieces of legal advice and the advice given in order to aid learning and

reduce costs. The Bulletin will also contain information on relevant case law updates.

The nature of requests for legal advice will be closely monitored and the Head of Corporate Affairs will hold a master file of legal advice received, ensuring that duplicate requests for legal advice are not made.

The number and nature of requests for legal advice will be reviewed on a six monthly basis by the Head of Corporate Affairs.

Any excessive requests for legal advice will be reported to the Director of Corporate Governance (Board Secretary).

7. Dissemination, Storage and Archiving (Control)

The policy will be made available to all staff via the Sheffield Health & Social Care NHS Foundation Trust intranet. All staff will be advised that the policy is available via Connect (the weekly staff e-newsletter).

Previous versions of the policy will be deleted from the intranet and website, however, electronic and hard copies of the previous version will be held in the relevant Trust archive. Version control is the responsibility of the Head of Corporate Affairs.

8. Training and Other Resource Implications

To facilitate continual improvement in the handling of requests for legal advice, one-to-one training will be provided throughout the year for relevant managers on request.

In addition, the Head of Corporate Affairs is available to work with groups of staff to address their specific training and learning needs. See Section 12 Contact Details.

Directors, Associate Directors, Deputy Directors, Service, Ward and Team Managers are responsible for making sure that their staff are aware of and comply with this policy.

9. Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
	Review and Audit	Head of Corporate Affairs	3 yearly or when changes to legislation or regulation occur	Director of Corporate Governance (Board Secretary)	Head of Corporate Affairs	Director of Corporate Governance

10. Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and website and remove old version	Head of Corporate Affairs	Following ratification	
Make staff aware of new policy via Connect	Head of Corporate Affairs	First issue of Connect following ratification	

11. Links to other policies, standards and legislation (associated documents)

Complaints Policy, Claims Policy, Duty of Candour and Being Open Policy, Learning from Deaths Policy, PREVENT Strategy Policy, Incident Policy, Complaints Policy, Confidentiality Code of Conduct, Managing Conflicts of Interest in the NHS Policy, Disciplinary Policy, Safeguarding Adults Policy, Safeguarding Children Policy, Bullying and Harassment Policy, Whistleblowing Policy and Procedure.

12. Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Director of Corporate Governance (Board Secretary)	David Walsh	0114 3050727	david.walsh@shsc.nhs.uk

13. References

Audit Commission's Inspection Report on Sheffield Care Trust Autumn 2007.

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1.0	Ratification and issue	November 2007	New policy issued
2.0	Review	November 2008	Trust name updated
3.0	Review	June 2010	Dates updated
4.0	Review	October 2011	Dates updated
5.0	Review	April 2014	Job titles and NHS Panel members updated
6.0	Review	January 2018	Reference to inquests removed Frequency of Litigation Bulletin added Legal advice process no longer included in staff induction
6.1	Extension to Review Date	January 2021	Review date extended to 30/06/2021 as approved by PGG on 11 Jan 2021 and ratified by ARC on 19 Jan 2021

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of “all SHSC staff” email	Any other promotion/ dissemination (include dates)
1.0	November 2007	November 2007	
2.0	November 2008	November 2008	
3.0	June 2010	June 2010	
4.0	October 2011	October 2011	
5.0	April 2014	April 2014	
6.0	March 2018	March 2018	
6.1	N/A – Administrative Amendment Only	N/A – Administrative Amendment Only	

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – Policy Screening - Public authorities are legally required to have 'due regard' to eliminating discrimination , advancing equal opportunity and fostering good relations , in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://nww.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No		
DISABILITY	No		
GENDER REASSIGNMENT	No		
PREGNANCY AND MATERNITY			
RACE	No		
RELIGION OR BELIEF	No		
SEX	No		
SEXUAL ORIENTATION	No		

Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)

Please delete as appropriate: no changes made.

Impact Assessment Completed by (insert name and date)

Wendy Hedland 04 January 2018

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site

<http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>

(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?



Yes. No further action needed.



No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. On completion of flow diagram – is further action needed?



No, no further action needed.



Yes, go to question 3

3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.

1.1 What is the policy/decision title? 1

1.2 What is the objective of the policy/decision? 1

1.3 Who will be affected by the policy/decision? 1

Will the policy/decision engage anyone's Convention rights? 2.1

YES **NO**

Will the policy/decision result in the restriction of a right?

YES **NO**

Is the right an absolute right? YES

NO

Is the right a limited right? NO

YES

Will the right be limited only to the extent set out in the relevant Article of the Convention? YES

YES

Flowchart exit

There is no need to continue with this checklist. However,

- Be alert to any possibility that your policy may discriminate against anyone in the exercise of a Convention right
- Legal advice may still be necessary – if in any doubt, contact your lawyer
- Things may change, and you may need to reassess the situation

1) Is there a legal basis for the restriction? AND

2) Does the restriction have a legitimate aim? AND

3) Is the restriction necessary in a democratic society? AND

4) Are you sure you are not using a sledgehammer to crack a nut?

NO

Policy/decision is *not* likely to be human rights compliant please contact the Head of Patient Experience, Inclusion and Diversity.

Access to legal advice MUST be authorised by the relevant Executive Director or Associate Director for policies (this will usually be the Chief Nurse). For further advice on access to legal advice, please contact the Head of Corporate Affairs

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Policy/decision is likely to be human rights compliant

BUT

Regardless of the answers to these questions, once human rights are being interfered with in a restrictive manner you should obtain legal advice. You should always seek legal advice if your policy is likely to discriminate against anyone in

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the exercise of a convention right.

Appendix E – Development, Consultation and Verification

This policy was originally written in 2007. It has been periodically reviewed to ensure it meets the audit needs of the Trust.

The initial discussions regarding this Policy took place at EDG and were agreed in principle. The policy itself was developed by the Head of Corporate Affairs and has been in force since August 2007. All staff were notified of this Policy via e-mail on its inception.

No formal consultation process took place. This is an internal Policy for Trust staff only.

Appendix F – Policy Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy template which can be downloaded on the intranet (also shown at Appendix G within the Policy).

1. Cover sheet



All policies must have a cover sheet which includes:

- The Trust name and logo
- The title of the policy (in large font size as detailed in the template)
- Executive or Associate Director lead for the policy
- The policy author and lead
- The implementation lead (to receive feedback on the implementation)
- Date of initial draft policy
- Date of consultation
- Date of verification
- Date of ratification
- Date of issue
- Ratifying body
- Date for review
- Target audience
- Document type
- Document status
- Keywords
- Policy version and advice on availability and storage

2. Contents page

3. Flowchart



4. Introduction



5. Scope



6. Definitions



7. Purpose



8. Duties



9. Process



10. Dissemination, storage and archiving (control)



11. Training and other resource implications



12. Audit, monitoring and review



This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee



13. Implementation plan



14. Links to other policies (associated documents)



15. Contact details



16. References



17. Version control and amendment log (Appendix A)



18. Dissemination Record (Appendix B)



19. Equality Impact Assessment Form (Appendix C)



20. Human Rights Act Assessment Checklist (Appendix D)



21. Policy development and consultation process (Appendix E)



22. Policy Checklist (Appendix F)

REQUEST FOR LEGAL ADVICE	
Name and Directorate of Person Making the Request	
Where significant pieces of work are anticipated (£10,000 or over), three quotes should be obtained from firms who are approved to supply legal services under the terms of the NHS North of England Commercial Procurement Collaborative (see the Head of Corporate Affairs for advice in this regard). There is an extremely competitive market for legal services and, while the hourly rates of suppliers on the framework agreement have been pre-tendered, experience shows that putting any established provider in a competitive situation will help to drive best value in terms of the quoted number of hours (and hence costs) to undertake any given piece of work.	
Date request made:	
Name of Solicitor Firm:	
Nature of request:	One Off Advice: <input type="checkbox"/> Ongoing Case: <input type="checkbox"/>
Reason for Request:	Please outline the reasons for your request for legal advice in sufficient detail for audit purposes.
Contact should not be made with solicitors until the legal advice request has been approved/signed off by the relevant Executive Director and Head of Corporate Affairs	
What services will you require?	Telephone Advice <input type="checkbox"/> E-mail Advice <input type="checkbox"/> Letter <input type="checkbox"/> Review of Papers <input type="checkbox"/> Liaison with third party (eg ACAS) <input type="checkbox"/>
Signature of Executive Director:	Date:
Countersigned by Budget Holder – David Walsh Director of Corporate Governance	Date: